AUG 13 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

AT WASHINGTON, D. C.

NATHAN INMAN GOFF, JR.,
Petitioner,

Vs.

SUE ELLEN WEEMS KINNEY GOFF,
Respondent.

No. 485

PETITION FOR WRITS OF CERTIORARI AND SUPERSEDEAS AND BRIEF

RICHARD T. ELY,
Attorney for Petitioner,
1100 Home Federal Building,
147 Jefferson Avenue,
Memphis, Tennessee 38103

MARVIN BROOKS NORFLEET
Attorney for Petitioner,
Suite 219
Sterick Building
Memphis, Tennessee 38103

INDEX

SUBJECT MATTER:	Pages
Affidavit	19
Argument	15
Assignment of Errors	5
Brief	7
Jurisdiction	3
Petition for Writs of Certiorari and Supersedeas	1
Rule X of the Circuit Court of Shelby County, Tennessee	7
Statement of Case	3
TABLE OF CASES:	
Cockrill v. People's Savings Bank, 155 Tenn, 342, 293 S. W. 996, 998	13
Conners v. (City of) Knoxville, 136 Tenn. 428, 189 S. W. 870	13, 14
Flippin v. Knaffle, 2 Tenn. Ch. 238	9
McMinnville & M. R. Co. v. Huggins, 47 Tenn. 217, 226	9
McMorrow v. Hunt, 137 Tenn. 243, 192 S. W. 931	12
Tennessee Central RRd. Co. v. Campbell, 109 Tenn. 640, 645, 75 S. W. 1012	14
TEXT BOOKS:	
Gibson's Suits in Chancery (The Chancery Bible in the State of Tennessee) Section 879	8
High on Injunctions, Section 5	9
Lube's Eq. Pl. (Wheeler's Ed.) XII-XIII	9
STATUTES:	
Tennessee Code Annotated, Section 16-508	12
Tennessee Code Annotated, Section 16-511	12
Tennessee Code Annotated, Section 27-801	14
Tennessee Code Annotated, Section 34-201	11
UNITED STATES CONSTITUTION:	
Amendment V	3
Amendment XIV, Section 1	3

IN THE

SUPREME COURT OF THE UNITED STATES

AT WASHINGTON, D. C.

NATHAN INMAN GOFF, JR.,
Petitioner,

Vs.

SUE ELLEN WEEMS KINNEY GOFF,
Respondent.

No._____

PETITION FOR WRITS OF CERTIORARI AND SUPERSEDEAS

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now comes Nathan Inman Goff, Jr., a citizen of the United States, presently residing in the City of Sarasota, State of Florida, formerly a resident citizen of Memphis, Shelby County, Tennessee, and respectfully petitions this Honorable Court for Writs of Certiorari and Supersedeas.

MAY IT PLEASE YOUR HONORS:

Your petitioner, Nathan Inman Goff, Jr., respectfully represents and shows to the Court that he was and is very much aggrieved by the action of the Supreme Court of the State of Tennessee in denying his Petition for Writs of Certiorari and Supersedeas in that Court and subsequently denying his Petition to Re-Hear in said Court; which action of the Supreme Court followed a denial of this petitioner's Petition for Writs of Certiorari and Supersedeas by the Court of Appeals of the State of Tennessee, at Jackson, wherein said Court of Appeals remanded to the Circuit Court of Shelby County, Division VI, for such further and other action as may be properly and legally had therein, with no prejudice to the rights of any party in the future proceedings of that Court resulting from the filing of the petition in the Court of Appeals and adjudged the costs of the temporary proceeding against the petitioner.

Your petitioner had petitioned the Court of Appeals for Writs of Certiorari and Supersedeas to obtain relief from the opinions and judgments rendered against him by the Honorable Friel Hastings, Judge, Division VI of the Circuit Court of Shelby County, Tennessee, at Memphis, on the 12th day of August, 1966, wherein said Court overruled the motion by petitioner "For transfer of cause to another Division of Court" and, on a motion by respondent wherein the Court interpreted a Consent Order Modifying Injunction and ordered certain funds disbursed and declined to grant petitioner a discretionary appeal.

Further, petitoner seeks to invoke the inherent and statutory power of the Appellate Courts of the State of Tennessee, with respect to the issuance of the Writ of Certiorari, to enforce the supervisory jurisdiction of the proceedings and judgments of said Circuit Court, and inferior tribunal.

JURISDICTION

Two basic constitutional questions are raised by this petition, to-wit:

I

Denial of due process of law: United States Constitution, Amendment V: "No person shall be *** deprived of life, liberty, or property, without due process of law; ***, without just compensation."

II

Denial of equal protection of law. United States Constitution, Amendment XIV, Section I. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside."

STATEMENT OF CASE

Petitioner sued respondent for divorce in the Circuit Court of Shelby County, Tennessee, on the 23rd day of December, 1965. (TR 36)

On January 5, 1966, respondent filed an Answer and Cross-Bill for Separate Maintenance and for Injunction (TR 27) and the Judge granted an injunction whereby petitioner was enjoined "from disposing of any stocks, monies, trust agreements or property, either by himself or through his attorney or agent." (TR 34)

On April 12, 1966, a Consent Order Modifying Injunction (TR 61) was entered in this cause which provided for the dividing of certain gold stocks and certain dividends due on said gold stocks in half and finding that your petitioner was due $199.50 credit against the respondent. Subsequently an order was entered as of May 13, 1966 (TR 67) in which the Court ruled "That the Court however is of the opinion that this credit should remain on the books and not be charged against the defendant's

monthly support check in the amount of $243.00, ***."

Petitioner moved the Court "For transfer of cause to another Division of Court," but was overruled by the Court in its order entered as of August 12, 1966 (TR 75).

Petitioner moved the Court for a discretionary appeal following the order of August 12, 1966, above mentioned, which the Court denied; whereupon petitioner duly filed his Petition for Writs of Certiorari and Supersedeas in the Court of Appeals of the State of Tennessee, at Jackson; subsequently duly filing his Petition for Writs of Certiorari and Supersedeas in the Supreme Court of the State of Tennessee and, on April 3, 1967, said Supreme Court denied the petition; that a Petition to Re-Hear was filed promptly on April 6, 1967, which Petition to Re-Hear was denied by said Court on May 15, 1967.

On May 30, 1967, petitioner's attorney, by letter to the Clerk of the Supreme Court of the State of Tennessee at Jackson, requested: "It is respectfully requested that the record in the above styled cause be sent to me in order that the appropriate printing may be accomplished for presenting this matter to the United States Supreme Court. Your cooperation in this respect will be sincerely appreciated." to which there was no response and another letter to said Clerk dated June 14, 1967 was sent certified mail, return receipt requested calling the Clerk's attention to the previous letter and again requesting the record to be sent, to which letter request a reply from said Clerk dated June 15, 1967 was received, stating as follows:

> "I apologize for my delay in replying to your letter of May 30th.
>
> I have your letter of 14th with further reference to obtaining the record in the above case, and call your attention to Rule 8 of the Supreme Court and Rule 7 of the Court of Appeals to the effect

that transcripts in ended cases may not be removed from the court archives by anyone for any purpose.

I refer you to Rule 10 of the Supreme Court of the United States with reference to making up records for that Court. It appears to me that the record would have to be made up, certified by the clerk of this court and forwarded. After looking at the rules you might advise me if you would like for the record to be forwarded to the Clerk of the Circuit Court. This can be done as the order entered in this case on February 23, 1967, provided that the case be remanded to the Circuit Court of Shelby County.''

By letter dated June 16, 1967 said Clerk was advised regarding Rule 38 of the Supreme Court of the United States and again requested a certified copy of the transcript of the record in this case be prepared and forwarded as soon as possible. Subsequently, on June 20, 1967, by long distance telephone, said Clerk discussed the matter further with petitioner's attorney and requested a letter from petitioner's attorney requesting the transcript to which petitioner's attorney agreed and sent a letter dated June 20, 1967, which letter appears in the record in Volume A preceding the index.

Ultimately, at 10:55 A.M. Central Daylight Savings Time on June 30, 1967, the certified record was received by petitioner's attorney and this petition was immediately commenced.

ASSIGNMENT OF ERRORS

1. The Trial Court abused its discretion in granting the injunction prayed by respondent (TR 34, 78, 84) in that it was all-inclusive, completely stripped the complainant and

cross-defendant of all of his rights to continue his business or personal affairs, even to the extent of expending pocket monies for food, sustenance and shelter.

2. The Trial Court abused its discretion in that the injunction granted, though unreasonable and oppressive, was not modified upon motion of petitioner; but said injunction was kept in full force and effect until the parties themselves negotiated for and obtained entry of the Consent Order Modifying Injunction on April 12, 1966. (TR 39, 40)

3. The Trial Court acted illegally in its Order Modifying Injunction entered August 12, 1966. (TR 73)

4. The Trial Court erred by entering the Order Modifying Injunction on August 12, 1966 in that the Consent Order Modifying Injunction entered April 12, 1966 (TR 61) clearly provides that dividends to become due in the future would no longer be under the control of the injunction, thus making such dividends the separate property of the petitioner, as trustee; the Consent Order being an agreement between the parties and elevated to the distinction of a Court Order, binding the court and the parties.

5. The court erred in not recognizing a trust in existence (TR 92) which was entered into previous to the marital difficulties of the parties and which Trust Agreement includes minors as beneficiaries thereof; but the court imposed orders upon the trust without first following legal prerequisites including the appointment of a guardian ad litem, a report from said guardian and a finding in regard to the interests of the children.

6. That the Trial Court erred when, on its own motion, it ordered payment of funds in excess of the support and maintenance awarded respondent previously, (TR 73, 74, 140, 141, 149, 150) though petitioner was neither in contempt of court nor in arrears for payment of support and maintenance.

7. The Trial Court abused its discretion in failing to follow its own Rule X (TR 137) which reads as follows:

"RULE X—MODIFICATION OF DECREES

Counsel seeking a modification of any decree shall present to the Judge in whose Court said cause is pending a sworn petition setting forth therein the grounds upon which said modification is sought, the change in the circumstances and conditions of the parties relied upon, and the Judge thereupon shall set a day certain for the hearing of such petition."

8. It was error for the Trial Court to rule consistently as suggested by the attorney for the respondent and to repeatedly ignore the rights of the petitioner. (TR 38, 107, 111, 112; 39, 86, 87, 88, 98, 101, 102; 67, 127, 132; 73)

9. It was improper for the Court on several occasions to make statements to the effect that petitioner was in contempt of court or might be in contempt of court and to promise heavy punishment if he were found to be in contempt of court. (TR 124, 129, 130, 132)

10. The Appellate Courts of the State of Tennessee erred in denying petitioner's Petition for Writs of Certiorari and Supersedeas.

BRIEF

As to the first Assignment of Error, the Court grossly abused its discretion in issuing the injunction (TR 34) in that the Injunction was all-inclusive, and completely denied petitioner of all of his rights to continue his business or personal affairs, even to the extent of expending pocket monies for food, sustenance and shelter and of completely suspending complainant's investment business.

Petitioner's Original Bill for Divorce (TR 8) alleges certain real property was conveyed to

husband and wife, thereby creating a tenancy by the entirety therein, and that the defendant contributed absolutely nothing toward the purchase of any of said real property.

In respondent's Answer and Cross-Bill (TR 29) respondent admitted the ownership alleged by petitioner and did not deny petitioner's allegation that she contributed absolutely nothing toward the purchase of any of said real estate.

Respondent in her pleading above mentioned (TR 32) prayed for separate maintenance and support of the children and herself and did not pray for a divorce nor did she give a statutory ground for divorce, being a prerequisite in the State of Tennessee for a divorce to be granted.

Gibson's Suits in Chancery (The Chancery Bible in the State of Tennessee) Section 879 provides: "**Discretion of the Chancellor in Granting Injunctions.**—In granting temporary relief by interlocutory injunctions, Court of Equity in no manner anticipate the ultimate determination of the question of right involved. They merely recognize that a sufficient case has been made out to warrant the preservation of the property, or rights, in issue, in status quo, until a hearing upon the merits. In order to sustain an injunction for the protection of property pendente lite, it is not necessary to decide in favor of the complainant upon the merits, nor it is necessary that he should present such a case as will certainly entitle him to a decree, upon the final hearing. The Court will, however, upon an application for an interlocutory injunction, consider the probability of the complainant ultimately establishing

his demand."

Cited by above is High on Injunctions, Section 5. Also cited by above is Note 38 as follows: "It is frequently said that the grant or refusal of an injunction is a matter of discretion. This is true if such discretion arises from a consideration of the fixed rules of Law and Equity, and is governed by an impartial purpose to rigidly apply those rules to the case at hand. In this State no man's rights should be dependent on a Judge's whim, or mood, or favor. If the complainant is entitled to the injunction, it is his right, and the Chancellor is in duty bound to grant it; and it would be tyranny and usurpation to withhold the grant. On the other hand, if the complainant is not entitled to an injunction, it would equally be tyranny and usurpation to bestow the grant. Where, however, it is doubtful whether an injunction should be granted, after duly considering the equities alleged, and the relative advantages and disadvantages which would result to the parties from granting or refusing the writ, in such a case an injunction should be denied. A Judge has discretion to do what in law he is in duty bound to do; but no discretion to deny any man any of his rights, or to give any man more than his rights; nor has he any discretion to withhold from any one what the law gives him, or to give to any one what the law withholds from him. Discretio est scire per legem quid sit justum. (Discretion is to know by means of the law what is just.) See preface to Lube's Eq. Pl. (Wheeler's Ed.), XII-XIII; McMinnville & M. R. Co. v. Huggins, 47 Tenn. 217, 226; Flippin v. Knaffle, 2 Tenn. Ch.

238; ante, Sec. 625, note 4; post, Sections 903, 948."

As to Assignment of Error two, the injunction granted was unreasonable and oppressive and it was sought to be modified by petitioner by motion "To dissolve injunction issued against Nathan Inman Goff, Jr.", (TR 39) but the Court declined to grant the motion to the extent requested and modified the injunction only to the extent of releasing certain funds from a bank and a real estate agent, leaving at least $128,000.00 in value of real property on which there existed $58,000.00 in mortgages (TR 79) and certain gold stock worth $136,750.00 (TR 80) still under injunction, though investments and stock transactions were the business of petitioner (TR 82) and the effect of the injunction was to prohibit petitioner from engaging in his business.

Further, on Assignment of Error two, a Consent Order Modifying Injunction (TR 61) was entered as of April 12, 1966, being the first significant relief petitioner obtained from the all-inclusive injunction, causing petitioner to be forced to negotiate with respondent.

As to Assignment of Error three, the Consent Order Modifying Injunction (TR 61) was binding on the parties and when entered by the Court was also binding on the Court. This is basic and academic. However, the Trial Court entered its Order Modifying Injunction (TR 73) August 12, 1966 in effect rewrote the Consent Order Modifying Injunction and subjected one-half of certain dividends in the hands of Merrill Lynch, Pierce, Fenner & Smith, Inc. to be paid to Richard T. Ely as Trustee for Sue Ellen Weems Kinney Goff and the two minor children of the parties, who shall pay from said funds to Sue Ellen Weems Kinney Goff, for herself and the use and benefit of the two minor children of the parties, the sum of $243.00 per

month; and to Leader Federal Savings & Loan Association the sum of $111.00 per month, being the monthly installments on the mortgage on the residence where respondent lived; all without benefit of attachment or other process; to all of which action of the Court petitioner here, complainant and cross-defendant below, excepted and prayed for a discretionary appeal, which the Court refused, and to which further action the complainant and cross-defendant excepted.

On Assignment of Error four, reference to the provisions of the Consent Order Modifying Injunction entered April 12, 1966 (TR 61) the following provisions will be found: "The parties reached an agreement, whereby *** and one-half of certain gold stock, held by Merrill Lynch, Pierce, Fenner & Smith, Inc. heretofore impounded by injunction, and dividends due, **or to become due** on said gold stock should be removed entirely from the aforesaid injunction." (Emphasis supplied) Therefore, dividends referred to by the order of August 12, 1966 (TR 73) were neither under injunction nor attachment and were the separate property of the petitioner, as Trustee. The Court had no jurisdiction over the dividends, but without any authority, ordered them paid into the hands of the Clerk, which actions were objected to by the petitioner. (TR 74)

As to Assignment of Error five, the Court refused to appoint a guardian ad litem to report on and act in the interest of the children of the marriage. The existence of the Trust, which was never denied, was called to the attention of the Court on several occasions. (TR 79, 92, 95, 96)

Tennessee Code Annotated, Section 34-201 provides: "The county court shall have full power to take cognizance of all matters concerning minors and their estates, and, whenever it appears necessary, shall appoint a guardian for an infant within

its jurisdiction, but the powers of the Chancery Court over such estates are not abridged."

As to jurisdiction of the Circuit Court in Tennessee, Tennessee Code Annotated, Section 16-508 provides: "It has concurrent jurisdiction with the Chancery Court to grant divorces, ***." and Section 16-511 provides: "Any suit of an equitable nature, brought in the Circuit Court, *** may be *** heard and determined by the Circuit Court upon the principals of a Court of Equity, with power to order and take all proper accounts and otherwise to perform the functions of a Chancery Court."

As to Assignment of Error six, the record reflects that petitioner was not in arrears for payment of support and maintenance but the Court, on its own motion, ordered payment of funds in excess of the support and maintenance previously awarded respondent. (TR 73, 74, 140, 141, 149, 150)

As to Assignment of Error seven, the assignment speaks for itself, further indicating the pattern of constant and consistent abuse of discretion.

Again, in Assignment of Error eight, continuous and repeated discrimination against petitioner and favoring of respondent is noted. (TR 38, 107, 111, 112; 39, 86, 87, 88, 98, 101, 102; 67, 127, 132; 73)

Further bolstering petitioner's contention of the repeated acts of the Trial Court showing animosity toward petitioner without justification is noted in Assignment of Error nine. (TR 124, 129, 130, 132)

As to Assignment of Error ten that the Appellate Courts of the State of Tennessee erred in denying petitioner's Petition for Writs of Certiorari and Supersedeas, the following authorities are respectfully noted:

"It is settled by the case of State ex rel. McMorrow v. Hunt, 137 Tenn. 243, 192 S. W. 931, that this supervisory or superintending writ may be granted in a proper case although the decree is not final. In the case of Conners v. (City of) Knoxville, 136 Tenn. 428, 189 S.W. 870, it is said:

"' "Certiorari" at common law performed the function of aid to a review and supervision of the proceedings of inferior boards and tribunals by a superior tribunal, not taking the place of appeal of writ of error, but bringing up the entire record in order to a determination whether there had been an absence or excess of jurisdiction, or a failure to proceed according to the essential requirements of the law.' 136 Tenn. at page 432, 189 S.W. at page 871."

"Considering further the authority of this Court to review the action of the trial court, as complained of by appellants, the foregoing opinion of Mr. Justice Swepston is sound in principle and finds added support in Cockrill v. People's Savings Bank, 155 Tenn. 342, 293 S.W. 996, 998, wherein it is held (opinion by Mr. Chief Justice Green), as follows:

"The court has broad powers, **inherent and statutory**, with respect to the issuance of the writ of certiorari, to enforce the supervisory jurisdiction of the proceedings and judgments of inferior tribunals."

"The appellate courts of the State have the same jurisdiction to award the writ of certiorari in cases where appeal or writ of error does not lie, to correct the errors of inferior courts of law or equity, that the circuit court has in such cases

to award such writ to correct the errors of inferior tribunals."

"The question to be determined at the outset is whether or not this is a case in which writs of certiorari and supersedeas should be granted.

"TCA 27-801 provides as follows:

"27-801. Constitutional basis.—The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy."

In Conners v. City of Knoxville, 136 Tenn. 428, at page 433, 189 S.W. 870, at page 871, Mr. Justice Williams quoted from the case of Tennessee Central RRd. Co. v. Campbell, 109 Tenn. 640, 645, 75 S.W. 1012, as follows:

" ' "The writ of certiorari does not owe its existence to constitutional provisions or statutory enactment. It is a common law writ, of ancient origin, and one of the most valuable and efficient remedies which come to us with that admirable system of jurisprudence.

" ' "This court *** is not restricted from its use by section 10 of article 6 of the Constitution, providing that the judges of inferior courts of law and equity shall have power to issue it in civil cases to remove them from any inferior jurisdiction into a court of law. This provision was only intended as a guaranty of the continuance of a power with which these judges were already vested." ' "

"Our Statute was not intended to work a change in the common-law function of the writ, as a supervisory or 'superintending writ' as it has been called."

ARGUMENT

The rigid and unreasonable terms of the injunction were brought to the Court's attention soon after the injunction was granted by a motion "To dissolve injunction issued against Nathan Inman Goff, Jr.", but the Court in entering its Order Modifying Injunction (TR 39) ruled "That the motion should not be granted to the extent requested, but that the injunction should be modified to permit certain funds only to be released to the complainant in order that he might pay certain installments due and past due on certain mortgages, his medical and hospital bills accrued as a result of his confinment incident to a lunacy proceeding, and bills accrued and to become due for repairs and maintenance of certain rental property." It was called to the Court's attention that the funds released "wouldn't begin to cover the expenses he (petitioner) already has." (TR 87) and further counsel for petitioner stated to the Court: "I think it is an unnecessary strain, and, of course, I do except to the Court's ruling, not only with regard to the point of money, but in tying up all of his business affairs, as the Court would be doing under the ruling that is being made at this time." (TR 105) Further, the Trial Court was put on notice (TR 114) that "We have X number of dollars, and you substract Y number of dollars, and whatever is left—and in this case Y will be greater than X." Saying in effect that the Court was not releasing from the injunction sufficient funds to meet the order entered by the Court and that petitioner's right to continue his business investments were being ignored.

In this regard, it should be noted that the petitioner was completely destitute from December 20, 1965 to and including the time of the entiry of the order, above mentioned, on February 4, 1966. (TR 85)

After several appearances in Court with petitioner's attorney attempting to obtain relief from the Court, a Consent Order Modifying Injunction (TR 61) was entered on April 12, 1966 whereby certain funds in a bank account and one-half of certain gold stock certificates were released from the injunction and a trust was established whereby one-half of the funds were paid to petitioner's attorney for disbursement to respondent, to the mortgagee on the homeplace, to the parties' attorneys as fees; all as a result of negotiation. But it should be noted that an effort was made by respondent for some sort of hearing, with the Court's full cooperation and without sufficient notice, to hold petitioner in contempt of court (TR 119-122); with comments from the Court: "He may be in contempt of court." (TR 124); and "Well, now, we can put it this way, we are not threatening him, and he is not here. If I did that and he didn't do it, I would put him in jail as quick as a wink and not for ten days either." (TR 129); and "You can give him my word, Mr. Ely, I don't know that he is trying to play games with the Court, but if he is I will put him in jail, you can give my word, and please explain it to him, it won't be for ten days it will be for six months. I will give him the worse, you can tell him that, when he tries to buck the court's order" (TR 132); and "If he balks just let me know that he balks, and he certainly will have a reception committee waiting for him when he comes back, I will tell him that." (TR 134)

That, while the Court had previously acknowledged the lack of authority to order payment of funds into Court by someone not a party to-wit: "Now, the only thing that

poses a qeustion, of course, the bank is also a party as a garnishee—whether the Court can order them—the bank —to pay anything—" (TR 127); but, nevertheless, the Court was pleased to enter an order on August 12, 1966 (TR 73) doing exactly that which it acknowledged earlier that it had no authority to do, to-wit: Order the payment of the sum of $4,261.40, received as dividends on the gold stock owned separately by the petitioner, as trustee, paid one-half to petitioner and one-half in trust for future support and maintenance and past support and maintenance for respondent and the children; though by previous order (TR 61), the Court removed dividends due, or to become due on said gold stock entirely from the injunction.

The denial of due process of law and the denial of equal protection of law guaranteed by the Fifth Amendment and the Fourteenth Amendment, Section 1, respectively, of the United States Constitution is abundantly apparent when the transcript is reviewed in relation to the Assignments of Error: 1. The order (TR 73) dividing $4,261.40 between petitioner and a trustee for respondent and the two minor children may have been intended for a worthy cause, but the fact remains that the funds were not under attachment; that the company in whose hands the funds were then held was not a party to the suit and that no process had brought the funds before the Court in any manner whatsoever; 2. The interest of minors were involved in a Trust Agreement (TR 92), but the Court imposed orders upon the trust without first appointing a guardian ad litem to make a report concerning the interests of the minors and then adjudicate as to their rights; 3. That the Court, on its own motion, ordered payment of funds, though petitioner was not in arrears for payment of support and maintenance; 4. The Court refused to follow its own Rule X which requires a sworn petition to be filed when the modifica-

tion of a decree is sought and a day certain set for the hearing thereof; 5. The pattern established by the trial court in ruling consistently with suggestions made by the attorney for the respondent clearly shows an inclination unreasonably favorable to respondent and her attorney; 6. The Tennessee Appellate Courts failing to take cognizance of the illegal actions of the Trial Court and its constant and gross abuse of discretion; and 7. Actions taken by the Trial Court during the pendency of requests for review by Appellate Courts (Supported by Affidavit attached hrereto) further indicating discrimination in favor of respondent and her attorney and against petitioner and his attorney.

It is respectfully urged to this Honorable Court in its demonstrated desire to protect the rights of individuals that this Honorable Court should take cognizance of the many acts of abuse of discretion, many being illegal, by the Trial Court and rule thereon to the end that the errors complained of by petitioner may be appropriately noted and appropriate order issue correcting the wrongs and errors of which petitioner compains and requiring that the cause be tried in a different division in the Circuit Court of Shelby County, Tennessee and before a jury.

Respectfully submitted,

Richard T. Ely

Richard T. Ely
Attorney for Petitioner

Marvin Brooks Norfleet
Attorney for Petitioner

STATE OF TENNESSEE
COUNTY OF SHELBY

I, Richard T. Ely, being duly sworn, make oath that I am counsel for Nathan Inman Goff, Jr., the petitioner; that I am familiar with the facts stated in the foregoing petition and that the same are true, except those stated on information and belief, and those I believe to be true, and further that, in my opinion, petitioner is entitled to the relief prayed.

Richard T. Ely

Richard T. Ely

Subscribed and sworn to before me this the 19... day of July, 1967.

William L. Swain Jr

Notary Public

My commission expires April 9, 1968.

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF SHELBY

Richard T. Ely, Attorney for Petitioner, after having been first duly sworn, states under oath the following:

That since the petitioner undertook to have the Appellate Courts of the State of Tennessee review the actions of the Trial Court, the Trial Court has been pleased to entertain and act upon the following matters:

A motion to Modify Injunction and for Disbursement of funds was entered; the Court acting upon said motion, entered its Order for Merrill Lynch, Pierce, Fenner & Smith, Inc., to pay into the hands of Clerk of the Court the sum of $2,828.80, which were dividends on the gold stock, to be disbursed to the respondent for support and maintenance of

herself and children and to be paid to the mortgagee on installments on the residence in which respondent lives. To all of which action, the petitioner excepted.

An Order Allowing Amendment and Amendment to Amended Bill for Divorce were entered and filed respectively; a Fiat was issued on the basis of the Amendment to Amended Bill for Divorce wherein it was alleged that petitioner, cross-defendant below, "is a non-resident of the State of Tennessee and a resident of the State of Florida, *** "and said Fiat instructed the Clerk of the Court to issue Order of Publication of Attachment of certain real properties, making the appearance date on the first Monday in July, 1967, for cross-defendant to make his appearance and plead, answer or demur to the cross-complainant's Original and Amended Bill and Amendment to Amended Bill for Divorce and Attachment, which publication appeared in The Daily News on May 30, June 6, 13, 20, 1967 and to which petitioner filed his Demurrer.

An Order relieving trustee and requiring an accounting was entered; an accounting being first and final accounting of trustee was filed; a Consent Order for Examination of Defendant Sue Ellen Weems Kinney Goff was entered and the physician making the examination found said defendant to be mentally competent.

An Answer of Garnishee, Merrill Lynch, Pierce, Fenner & Smith, Inc. was filed admitting the gold stocks in the account of Nathan Inman Goff, Jr., as Trustee, listing said stocks.

The Court or the Clerk thereof set this cause for hearing on the 10th day of July, 1967, being one week after the appearance date of the aforesaid publication and also the setting of the case was made before the appearance date when the case was not at issue. On July 10, 1967, when the case was called, petitioner's attorney insisted that the cause was not properly before the Court; to which comment respondent's attorney conceded the point and the Court continued the case to await action on the Demurrer and subsequent pleadings, if any, suggesting to the attorney for respondent that he enter appropriate motions to dispose of the Demurrer, to request an additional pendente lite fee of $2,500.00 and an order for the payment in to the hands of the Clerk of approximately $1,500.00 for future payments of support and maintenance to respondent and the children.

The Trial Court was advised of this petition being prepared and in the printer's hands at the time.

The following motions were made by respondent and acted upon by the Court:

Motion No. 1. That the Court order the dividends held by Merrill Lynch, Pierce, etc. on the gold stock in the approximate amount of $1,506.00 paid to Ben C. Wessels, Clerk, so that Mrs. Goff and the children can receive support pendente lite.

Motion No. 2. That the Court allow Ben C. Wessels, Clerk, to pay $193.00 publication costs to The Daily News.

Motion No. 3. That the Court allow me a pen-

dente lite fee of $2,500.00 pending further proceedings in this cause.

Motion No. 4. That the demurrer filed in this cause be stricken and overruled for the following reasons: 1. That it is frivolous and filed only for the purpose of creating a delay.

The Court granted the first motion to which petitioner excepted; the Court overruled the second motion; the Court allowed a further pendente lite fee in the sum of $1,000.00 to which petitioner excepted; the fourth motion was granted which overruled the petitioner's Demurrer to which petitioner excepted.

In both instances above stated, the Court has ordered payment into the hands of the Clerk of the Court of funds in the hands of Merrill Lynch, Pierce, Fenner & Smith, Inc. without attachment, garnishment, or the naming of said company as a party defendant in the cause; therefore, without due process of law.

In testimony whereof affiant has hereafter affixed his signature.

Richard T. Ely

Richard T. Ely
Attorney for Petitioner

Subscribed and sworn to before me at Memphis, Tennessee, on the 19 day of July, 1967.

William R. Irwin Jr

Notary Public

My commission expires April 9, 1968.